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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,473	01/21/2004	John C. Ructer	P0011409.00	4388
27581	7590	11/29/2007		
MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MINNEAPOLIS, MN 55432-9924			EXAMINER GEDEON, BRIAN T	
			ART UNIT	PAPER NUMBER
			3766	
			MAIL DATE	DELIVERY MODE
			11/29/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/761,473

Applicant(s)

RUETER, JOHN C.

Examiner

Brian T. Gedeon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION:

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. Applicant is advised that the Notice of Allowance mailed 1 March 2007 is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

The indicated allowability of claims 1-20 is withdrawn in view of the newly discovered reference(s) to Sloman et al. (EP 1 136 098 A2) and Schloss (US Patent no. 6,456,882). Prosecution on the merits of this application is reopened on claims 1-20 considered unpatentable and rejections based on the newly cited reference(s) follow.

### ***Oath/Declaration***

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Specifically, the oath/declaration do not have the correct statement with respect to the duty to disclose.

CORRECT STATEMENTS should read:

- "I acknowledge the duty to disclose information which is material to patentability of this application in accordance with Title 37, Code of Federal Regulations Section 1.56."

INCORRECT STATEMENTS:

- "I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations Section 1.56(a)"
- "I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations Section 1.56(a)"
- "I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations Section 1.56"

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Sloman et al. (EP 1 136 098 A2).

In regard to claims 1, 11, and 12, Sloman et al. describes an implantable medical device 10 comprising: a pulse generator 70 and 72, col 7 lines 40-45, for delivering pacing pulses; at least one electrode 26, 27, and 28, see fig. 1 and col 6 lines 5-8, in electrical communication with the pulse generator for delivering the pacing pulses to

cardiac tissue; and a microprocessor 60, col 7 lines 17-18, for controlling the pulse generator, receiving sensed data from the at least one electrode, wherein the sensed data includes an indicator, col 17 line 28, of increased pacing threshold, and increasing a safety factor, col 17 lines 19-22, used for setting the pacing pulse energy delivered by the pulse generator when the indicator of increased pacing threshold is detected.

In regard to claims 6-10 and 16-20, Sloman et al. have an impedance sensor 112, an arrhythmia detector, col 11 lines 25-47, a refractory period detector, col 8 lines 1-2, and/or change in pacing/stimulation modes, col 12 lines 4-15.

5. Claims 1, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Schloss (6,456,882).

In regard to claims 1, 11, and 12, Schloss describes an implantable medical device 700 comprising: a pulse generator 80, for delivering pacing pulses; at least one electrode 75 and 77, in electrical communication with the pulse generator for delivering the pacing pulses to cardiac tissue; and a microprocessor 22 for controlling the pulse generator, receiving sensed data from the at least one electrode, wherein the sensed data includes an indicator, col 12 lines 27-30, of increased pacing threshold, and increasing a safety factor, col 12 lines 25-27, used for setting the pacing pulse energy delivered by the pulse generator when the indicator of increased pacing threshold is detected, also see figure 3.

In regard to claims 2, 3, 13, and 14, setting a time interval during which the increased safety factor is maintained; and restoring the safety factor to a programmed value after the time interval has expired, col 3 lines 42-47.

In regard to claims, 4, 5, and 15, setting a time interval during which the increased safety factor is maintained; and restoring the safety factor to a programmed value after the time interval has expired, col 3 lines 37-41.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-5 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sloman et al. (EP 1 136 098 A2) in view of Schloss (6,456,882).

In regard to claims 2-5 and 13-15, Sloman et al. substantially describe the invention as claimed except for the setting time interval and restoring safety factors to a programmed variable. Schloss teaches setting a time interval during which the increased safety factor is maintained; and restoring the safety factor to a programmed value after the time interval has expired, col 3 lines 42-47, and setting a time interval during which the increased safety factor is maintained; and restoring the safety factor to a programmed value after the time interval has expired, col 3 lines 37-41. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was

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made to modify the invention of Sloman et al. with the teaching of Schloss in order to determine if the safety margin adjustment criteria has been met, and that excess energy is not expended if deemed not necessary by having a high safety margin.

8. Claims 6-10 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schloss (6,456,882) in view of Sloman et al. (EP 1 136 098 A2).

In regard to claims 6-10 and 16-20, Schloss substantially describes the invention as claimed except for the indicators of increased pacing threshold. Sloman et al. have an impedance sensor 112, an arrhythmia detector, col 11 lines 25-47, a refractory period detector, col 8 lines 1-2, and/or change in pacing/stimulation modes, col 12 lines 4-15. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Schloss with the teachings of Sloman et al. since Sloman et al. discloses means and methods for detecting various indicators indicating an increased threshold.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Gedeon whose telephone number is (571) 272-3447. The examiner can normally be reached on M-F 8:30-5:00.

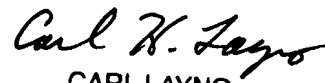
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on (571) 272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Carl H. Layno  
Supervisory Patent Examiner  
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CARL LAYNO  
PRIMARY EXAMINER